

In the Matter of)
)
Implementation of Section 304 of the) CS Docket No. 97-80
Telecommunications Act of 1996)
)
Commercial Availability of Navigation Devices)

To: The Commission

On March 4, CERC filed with the Commission an *ex parte* letter accompanying expert Declarations by a top executive of POD manufacturer SCM Microsystems, and by industry consultant Jack Chaney, an originator and inventor of the concept underlying POD implementation of a standard national security interface. These Declarations indicated that unsupported cost estimates, previously furnished to the Commission by the National Cable & Telecommunications Association (“NCTA”), were several times too high. The SCM Declaration also contained a firm offer to sell PODs, at the stated price/volume points, for delivery starting in 6 - 12 weeks. The NCTA, in an *ex parte* document first filed on March 6, has offered several additional rationales for repeal of the Commission’s Rule, “even assuming the cost figures alleged by retailers.” This CERC *ex parte* filing responds to those additional purported rationales. These are:

- NCTA's first two rationales are fundamentally at odds with each other. They demonstrate why retailers, who have been waiting for competitive products since 1996, urge the Commission *not* to do away with its one rule that should assure the availability of such products.

The Plug & Play Agreement Does Not Address
Or Alleviate The Need For The POD Reliance Rule,
Covers Only Unidirectional Products,
And Has Not Yet Been Implemented
By the Commission

CERC is an enthusiastic supporter and endorser of the December 19th agreement between consumer electronics manufacturers and cable operators,¹ and is fully confident that it will be implemented by the Commission and honored by cable MSOs.² However, the parties are only in the early stages of negotiating a similar set of proposals with respect to interactive devices. And even in the context of unidirectional devices, there would be a significant regulatory burden to assure that every MSO system of 750 MHz or greater activated channel capacity provides support for POD-reliant products that is reliable and comparable to that given to proprietary products.

The 2005 reliance date provides a market, rather than a regulatory, mechanism to assure consumer and manufacturer confidence in POD-reliant devices: It eliminates the need for the Commission to make ongoing regulatory judgments over whether cable MSOs are giving *equivalent* support to competitive entrant products that rely on an interface devised solely for their use. Such a path was avoided in the successful deregulation of telephone customer premises equipment, when a common interface was specified for entrants and incumbents alike. Similarly, the 2005 date should make the competitive future of the digital cable device industry unambiguous. Doing away with the 2005 date may perpetuate, into the interactive era, the dual system that since 1998 has failed to produce a single POD-reliant product.

Point (2) Re The 2001 “Retail Initiative”
Refutes Point (1) By Qualifying Cable Industry Support
For PODs And Ultimately Denying That The Entire Cable
Industry Is Committed To Supporting
POD-Reliant Competitive Products

After pledging that its members are all fully committed to supporting POD-reliant products, the NCTA, as its next point, argues that POD-reliance is not at all necessary for retail products, and that the industry could satisfy its obligation under Section 304 if MSOs never supported a single POD-reliant product. The “retail initiative” was announced in 2001, without any prior

¹ See CERC press release, *Consumer Electronics Retailers Praise Cable DTV Agreement*, December 19, 2002, at www.ceretailers.org.

² The December 19 letter to Chairman Powell stipulates that the parties are not bound to implement any part of the package, including the model license agreement, unless the Commission enacts each regulatory piece.

consultation with retailers of which CERC is aware. Its entire basis and rationale was that POD-reliance is not necessary to a competitive market if MSOs are willing to allow system-specific, proprietary boxes to be distributed by retailers.³ For NCTA still to cite this “initiative” several months *after* its major members signed the “Plug & Play” agreement indicates that at least some elements of the cable industry must still have misgivings about supporting POD-reliant products, and would prefer to stick with the old paradigm of proprietary products and integrated security. *It was precisely to address such reluctance to support a system relied on only by competitors that the 2005 POD reliance date was adopted by the Commission.*

Long-Term Consumer Costs Will Be Lowered In A Competitive Market

The original NCTA cost estimates were never documented by specific facts pertaining to costs, and have been significantly challenged by SCM’s very specific price/volume offers for POD delivery. NCTA says that even if these plain facts (still dubbed allegations by NCTA) are accepted, the long-term costs to consumers would be greater. This argument is based on a set of incomplete and improbable assumptions put forward by NCTA on this issue.

To reach the figure of “hundreds of millions” in increased costs, NCTA must assume a volume (based on SCM price offers, which it accepts *arguendo*) of at least ten million MSO-provided set-tops, *in addition to any sold by competitive entrants*. According to industry statistics, such a figure must either be spread over several years *or* be based on an assumption that primarily MSO units, and very few competitive units, will be distributed.⁴

The SCM and Chaney Declarations teach that at as volume levels rise, the unit cost for PODs and Host interfaces will decline significantly *further* below the figures supplied for delivery today or, at stated volumes, in 2005. This projection is consistent with assumptions the Commission has made in other recent matters.⁵ If the NCTA figure does assume a comparable sales level of competitive units, then PODs will have reached over 20 million units -- further increasing the

³ CERC has disagreed with this premise consistently. Acceptance of it by the Commission would be the ultimate step away from both competition and the intent of the Congress. *See* CERC *ex parte* filing reacting to NCTA’s unilateral announcement, *Reply To NCTA*, filed August 1, 2002. As to how and why the cable industry failed to meet the Commission’s July 1, 2001 date to support POD-reliant products, see CERC’s *Consumer Electronics Retailers Coalition Status Report, “J2K Plus 1,”* filed July 16, 2001.

⁴ According to NCTA statistics, at the end of 2002 there were 19.2 million digital cable subscribers (http://www.ncta.com/industry_overview/indStats.cfm?statID=14); estimates of digital set-top deployment have ranged from 25-30 million.

⁵ In its 2002 Order with respect to DTV tuner integration, the Commission predicted that volume, learning curve, and semiconductor integration should result in very steep price declines for DTV tuners. A POD is significantly less complex and is subject to even higher degrees of integration. *See* SCM Declaration.

prospects for cost declines with new generations of semiconductors.⁶

The NCTA argument also overlooks the dynamic benefits of competition, and the renewability of POD solutions, as has been demonstrated through use of a common interface in Europe. The SCM Declaration indicates that in Europe, a common security interface has fed a competitive market for *host* devices that has brought prices down to fractional levels. It also explains why POD solutions can be made *more* secure, and are far more economical to replace if compromised.

The NCTA also assumes that POD costs will simply be added to consumer device bills, rather than being classified as a system expense on the MSO side of the customer premises / MSO divide, or pooled with analog conditional access devices, as digital set-tops are. Yet the Commission has not yet addressed, or been asked by the NCTA or its members to address, the pricing status of PODs. This illustrates that the present offensive re the 2005 date is at best premature. Pricing and burden allocation will be an important issue for competition, on which public comment should be received -- the more broadly POD reliance is shared, the greater incentive MSOs will have to insist on lower prices and highest quality and performance when dealing with potential suppliers. This should drive prices down, and quality up, even further.

For several years, CERC has joined CEA and others in urging that the 2005 date be moved up, as it was too far in the future to influence the procurement incentives of cable operators. The date was not moved up, and incentives remained fixed and non-supportive of competitive entry. It seems evident that the push by NCTA and others for relaxation of this date is occurring because, finally, this date *has* registered on the procurement radar screen. The Commission's regulatory July 1, 2000 deadline for support of competitive products passed amid squabbling and several rounds of finger-pointing among the interested parties. To remove the market-oriented 2005 date, just as it is beginning to have its intended influence, would be another tragic blow to competition. On behalf of its members, CERC urges the Commission to retain this rule.

⁶ The SCM Declaration indicated further generations of semiconductor integration will be justified by higher volume levels.

Respectfully submitted,

Consumer Electronics Retailers Coalition

Best Buy Co, Inc.
Circuit City Stores, Inc.
Good Guys, Inc.
International Mass Retail Association
National Retail Federation
North American Retail Dealers Association
RadioShack Corporation
Sears, Roebuck & Co.
Tweeter Home Entertainment Group, Inc.
Ultimate Electronics, Inc.

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